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In the Supreme Court of the United States

OCTOBER TERM, 1982

FAITH CENTER, INC., PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Federal Communications Commission properly exercised its discretion in dismissing a renewal application for a television station license because the licensee (a religious organization) repeatedly failed to comply with numerous discovery orders for information relevant to an inquiry into allegations of fraudulent solicitation of funds, which, if substantiated, could have disqualified the renewal applicant.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statement 2

Argument 10

Conclusion 15

TABLE OF AUTHORITIES

Cases:

FCC v. *Pottsville Broadcasting Co.*, 309 U.S. 134 11

FCC v. *WOKO, Inc.*, 329 U.S. 223 14

Faith Center Church v. *FCC*, Civil No. CV79-2901 NML (C. D. Cal. Aug. 1, 1979), aff'd, No. 79-3660 (9th Cir. Mar. 24, 1980) 6

Faith Center, Inc., 88 F.C.C. 2d 788 9

Faith Center, Inc., 90 F.C.C. 2d 519 9

Jefferson Radio Co. v. *FCC*, 340 F.2d 781 5

King's Garden, Inc. v. *FCC*, 498 F.2d 51, cert. denied, 419 U.S. 996 11

Link v. *Wabash R.R.*, 370 U.S. 626 14

NAACP v. *Alabama*, 357 U.S. 449 12-13

National Broadcasting Co. v. *United States*, 319 U.S. 190 11

Page

Cases—Continued:

National Hockey League v. *Metropolitan Hockey Club*, 427 U.S. 639 14

Office of Communication of the United Church of Christ v. *FCC*, 359 F.2d 994 ..... 11, 12

RKO General, Inc. v. *FCC*, 670 F.2d 215, cert. denied, 456 U.S. 927 14

Stereo Broadcasters, Inc. v. *FCC*, 652 F.2d 1026 5

United States v. *Lee*, 455 U.S. 252 11

Constitution and statutes:

United States Constitution, First Amendment 3, 5, 6, 10, 14

Communications Act:

Section 307(d), 47 U.S.C. 307(d) 11
Section 309(a), 47 U.S.C. 309(a) 11
Section 309(e), 47 U.S.C. 309(e) 4
Section 312(a)(6), 47 U.S.C. 312(a)(6) 2, 11
Section 312(b)(2), 47 U.S.C. 312(b)(2) 11
Section 402(b), 47 U.S.C. 402(b) 6

18 U.S.C. 1343 ..... 2, 4, 11, 12

Miscellaneous:

Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C. 2d 979 5

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OPINIONS BELOW

The judgment order of the court of appeals (Pet. App. 1-2) is not reported. The opinion and order of the Federal Communications Commission dismissing petitioner's broadcast license renewal application (Pet. App. 5-68) are reported at 82 F.C.C. 2d 1. The opinion and order of the Commission denying rehearing (Pet. App. 76-78) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on April 7, 1982. A petition for rehearing was denied on June 22, 1982 (Pet. App. 3-4). The petition for a writ of certiorari was filed, after an extention of time, on November 19, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Petitioner Faith Center, Inc. (Faith) is the licensee of television station KHOF-TV in San Bernardino, California.[1] In 1977 the Federal Communications Commission received complaints that KHOF-TV had been used to raise funds over-the-air and that these funds were not used for the purposes described in the broadcast solicitations (Pet. App. 19).[2] The Commission thereafter instituted an informal investigation into Faith's operation of KHOF-TV for possible violations of the wire fraud statute, 18 U.S.C. 1343, which prohibits the use of a television station for the purpose of carrying out any scheme "to defraud" or "for obtaining money * * * by means of false or fraudulent pretenses, representations or promises." The Commission has authority, pursuant to Section 312(a)(6) of the Communications Act, 47 U.S.C. 312(a)(6), to determine whether a television station has violated 18 U.S.C. 1343.

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[1]In addition to being a broadcast licensee, Faith is a nondenominational Christian Church founded in 1947 and headquartered in Glendale, California. Faith and Wescott Christian Center, an affiliated church involved in the proceedings below, are members of the Full Gospel Fellowship of Churches, International. Dr. W. Eugene Scott is the president, treasurer and pastor of Faith and Wescott Christian Center. He is also the president of the Full Gospel Fellowship (Pet. App. 6).

[2]The complaints included allegations that Faith's president and pastor, Dr. Scott, used funds that he had solicited over KHOF-TV for his own personal use by giving them to organizations in which he had an interest, such as the Wescott Christian Center. It was further alleged that fund raising appeals by Dr. Scott were accompanied by false statements that he had pledged money and that he received only $1.00 a year from the church, when, in fact, he failed to pay the alleged pledges and the church provided him with a $185,000 house rent free and a hotel suite costing $2,000 to $3,000 per month (Pet. App. 8-9, 19, 20).

In the course of the Commission's investigation, the licensee repeatedly was requested to make available relevant materials, including videotapes of Dr. Scott's "Festival of Faith" programs, on which solicitations were made.[3] The Commission also sought to obtain accounts receivable ledgers, lists of solicitations and monies received, records of money spent on each project for which funds were solicited, a list of Dr. Scott's own pledges and contributions to Faith, and a list of people making contributions and pledges. Faith refused to comply with these requests. One of the reasons advanced for this refusal was the broad claim that the Commission was seeking the production of material protected from governmental scrutiny by the First Amendment.

On June 15, 1978, the Commission rejected this argument (C.A. App. 52-53).[4] The FCC explained that it frequently must examine a licensee's records in order to fulfill its "responsibility of insuring that broadcast station licensees operate their stations in accordance with the Communications Act, the Commission's rules, regulations and policies, and in a manner consistent with the public interest, convenience and necessity" (C.A. App. 52). Accordingly, the Commission asked that Faith produce the requested materials; however, the Commission stated that it was not then

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[3]Faith's initial reply to the request for the videotapes was that their production would be burdensome and expensive, but it later replied that any existing tapes were the property of its sister church, Wescott Christian Center (Pet. App. 8). Faith subsequently attempted to subpoena the tapes from Dr. Scott (its president and treasurer) and Wescott (of which Dr. Scott is also president and treasurer). The Administrative Law Judge (ALJ) and the Commission both concluded that, in light of the relationship between Faith, Westcott and Dr. Scott, the requested subpoenas were "frivolous" (Pet. App. 54).

[4]"C.A. App." refers to the joint appendix filed in the court of appeals. A copy of the joint appendix has been lodged with the Clerk of this Court.

requiring the licensee to reveal the names of "persons contributing or pledging funds" (C.A. App. 53 n.1). Faith produced some of the requested information, but it continued to resist production of the videotapes, cash receipts and disbursement journals, specific evidence that expenditures for various projects were ever made, and a list of Dr. Scott's own pledges and contributions.

b. Faith's renewal application was then designated for evidentiary hearing pursuant to 47 U.S.C. 309(e). One of the issues raised was whether the over-the-air fund raising broadcasts on KHOF-TV violated 18 U.S.C. 1343 (Pet. App. 6-8).

The Commission's Broadcast Bureau, which had the burden of proceeding with the initial presentation of evidence on this issue, propounded 16 interrogatories to Faith and a request for five categories of documents. The interrogatories sought information about the amount of funds collected as a result of Faith's over-the-air solicitations, the amount actually dedicated to the projects for which money was solicited, the amounts of contributions turned over to Wescott Christian Center, and the extent to which Dr. Scott honored pledges of his own funds (C.A. App. 79-81). The documents requested included videotapes of KHOF-TV's "Festival of Faith" programs, cash receipts, ledgers, and pledges made by Dr. Scott (Pet. App. 11; C.A. App. 74-75).

At a prehearing conference on December 13, 1978, Faith indicated that it would cooperate with the Bureau and informally would produce cancelled checks reflecting payments for certain Faith projects. The ALJ set a hearing date of March 20, 1979, and directed Faith to respond to the Bureau's discovery requests by January 15. At a second prehearing conference, the hearing date was extended to June 26, 1979, to accommodate Faith, which had declared,

on January 10, that it was considering the possibility of a "distress sale" of KHOF-TV.[5]

The Bureau considered Faith's responses to the discovery requests inadequate, and filed a motion to compel Faith to answer its interrogatories. The Bureau stated that it was not asking for donors' names, "at least for the present" (C.A. App. 233 n.2; emphasis omitted). Faith opposed the motion to compel in its entirety, arguing that it was a religious organization protected by the First Amendment and that the Bureau's discovery interfered with its religious beliefs (C.A. App. 250-270).[6]

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[5]Since 1978, the Commission has allowed licensees whose renewal applications have been designated for hearing to sell their stations to minority buyers at a distress price if certain specified conditions have been satisfied. See *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 F.C.C. 2d 979 (1978). Cf. *Stereo Broadcasters, Inc.* v. *FCC*, 652 F.2d 1026 (D.C. Cir. 1981). This is an exception to the general policy against allowing a broadcaster to assign its license until a determination has been made that the licensee is qualified to hold the authorization. See *Jefferson Radio Co.* v. *FCC*, 340 F.2d 781 (D.C. Cir. 1964).

Faith stated that it would inform the ALJ of its distress sale election by February 27, 1979 (Pet. App. 9). The ALJ warned Faith that if it waited to seek distress sale relief until the scheduled commencement of the hearing in June, he would take into account the time extended in assessing any such requests (Pet. App. 10). In fact, Faith did not announce its intention to make a distress sale of KHOF-TV until October 30, 1979. Its petition for distress sale relief was filed with the FCC on February 29, 1980 (Pet. App. 13, 14).

[6]Although the Commission at the outset had rejected Faith's apparent objection to any inquiry into its practices because of its status as a religious organization (see page 3, *supra*), Faith on a number of occasions appeared to reiterate this claim. In addition to its pleading in response to the motion to compel, Faith asserted at a March 30, 1979, prehearing conference that the *entire* FCC inquiry into its fund-raising practices on KHOF-TV was constitutionally impermissible (C.A. App. 2032-2046). The ALJ rejected Faith's arguments because he considered himself bound by the Commission's prior determinations concerning Faith's constitutional arguments and designating Faith's renewal application for hearing on certain specified issues (C.A. App. 2046-2047).

The ALJ granted the Bureau's motion to the extent it sought information concerning the amounts of money donated that were actually dedicated or expended for the projects for which they were donated and the dates of such expeditures. He also found that Faith had not provided information about the amounts spent for Dr. Scott's personal use or the dates of such expenditures. Finally, the ALJ rejected Faith's refusal to answer certain interrogatories on constitutional grounds (Pet. App. 10). None of these interrogatories required Faith to reveal the names of donors (see C.A. App. 80-81, 233, 272, 274, 2032-2048).

c. Faith then filed a notice of appeal in the United States Court of Appeals for the District of Columbia Circuit, pursuant to Section 402(b) of the Communications Act, 47 U.S.C. 402(b). *Faith Center, Inc.* v. *FCC*, No. 79-1478. In its appeal, Faith challenged various orders of the ALJ and asked the court to intervene at the interlocutory stage to protect Faith's First Amendment rights (Pet. App. 10-11, 39).[7] On July 13, 1979, the court of appeals dismissed Faith's appeal and denied its motion for a stay (Pet. App. 75).[8]

d. Thereafter, Faith filed further responses to the Bureau's discovery requests. The Bureau found these to be inadequate and filed another motion to compel. On July 30,

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[7]Faith's additional argument that the Bureau's discovery also violated the Fourth Amendment subsequently was abandoned and is not before this Court.

[8]Faith did not seek review in this Court of the court of appeals' dismissal of its appeal. Instead, on August 1, 1979, Faith filed a complaint in the United States District Court for the Central District of California, seeking to enjoin the FCC from proceeding with the license renewal hearing. Faith complained in broad terms that the FCC was violating its constitutional rights. On August 31, 1979, the district court granted the Commission's motion to dismiss the complaint. *Faith Center Church* v. *FCC*, Civil No. CV79-2901 NML (C.D. Cal. Aug. 1, 1979), aff'd, No. 79-3660 (9th Cir. Mar. 24, 1980).

1979, the Bureau moved to dismiss Faith's application because of its repeated failures to comply with the ALJ's discovery orders (C.A. App. 329-343). The ALJ issued an order directing Faith to file additional responses to the Bureau's discovery requests by August 17, 1979,[9] and scheduled the evidentiary hearing for November 27, 1979 (Pet. App. 11). Faith filed additional responses to the Bureau's interrogatories, but the Bureau considered the new responses inadequate and requested a ruling on its motion to dismiss Faith's renewal application (Pet. App. 12-13).

In addition, on October 1, 1979, the Bureau filed a second set of interrogatories and a motion for production of documents. The 39 interrogatories requested information about KHOF-TV programs during which solicitations were made, financial records concerning the station's fund-raising projects, funds used for specific projects, segregation of solicited funds from other funds, financial records pertaining to Faith that were in the possession of Wescott Christian Center, the identity and responsibilities of Wescott's officers and directors, the existence and location of the "Festival of Faith" program tapes and the expenses and contributions of Dr. Scott (Pet. App. 12). One of the interrogatories sought information that could be construed to require the disclosure of the names of donors (C.A. App. 553). Faith objected to all of the interrogatories and answered none of them.[10]

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[9]The ALJ's order included a requirement that Faith produce the videotapes of the "Festival of Faith" programs on KHOF-TV for the period from September-November 1976. The production of these tapes had previously been required by the ALJ in three separate orders (see C.A. App. 1337 n.14).

[10]Faith argued that the interrogatories were unduly burdensome, both in terms of quantity and timeliness; that all of the interrogatories were defective in form; that all of the document production was premature; that certain interrogatories were "irrelevant" and not calculated to

On October 30, 1979, Faith requested a continuance of the hearing to negotiate a distress sale. The ALJ denied the continuance because the hearing was imminent and Faith had failed to pursue distress sale relief earlier in the proceeding as it had represented it would (Pet. App. 13).[11]

On December 4, 1979, the ALJ rejected Faith's objections to the Bureau's second set of discovery requests, and ordered Faith to respond within two weeks to the Bureau's interrogatories and its motion to produce. The ALJ stated that Faith had failed to comply with previous discovery orders and warned Faith that continued failure to answer the Bureau's interrogatories and to produce the required documents, including the videotapes, could lead to dismissal of its renewal application. The ALJ noted that Faith had not answered any of the Bureau's 39 interrogatories filed in October, and that Faith's objections consisted largely of generalized complaints (Pet. App. 13).

Faith appealed the ALJ's order to the Commission and asked the FCC to stay the deadline for Faith's discovery response pending disposition of the appeal. On December 18, 1979, Faith filed additional responses to the Bureau's second set of interrogatories. The stay motion was denied by the Commission on December 28, 1979 (Pet. App. 13-14).

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lead to the discovery of admissible evidence; that two interrogatories were objectionable because the information sought could have been requested much earlier; and that one interrogatory was an abuse of the discovery process (Pet. App. 12-13, 45).

[11]On November 27, 1979, the Bureau filed a third set of interrogatories, consisting of 17 interrogatories, and its third motion for production of documents, comprising five classes of documents. Faith's performance with respect to the third set of interrogatories was not a factor in the dismissal of its application either by the ALJ or by the FCC (Pet. App. 38 n.65).

Faith then sought another continuance of the hearing on the ground that it had elected to pursue a distress sale. Faith filed its petition for distress sale relief on February 29, 1980. The ALJ refused to hold the proceeding in abeyance, however, and on March 11, 1980, a further prehearing conference was held in order to consider Faith's most recent responses to the Bureau's second discovery requests (C.A. App. 1937-2029).

2. On March 17, 1980, the ALJ dismissed Faith's license renewal application for KHOF-TV and terminated the proceeding. He concluded that Faith's responses to the Bureau's discovery requests were made in bad faith or were otherwise inadequate, and that Faith had deliberately obstructed the proceedings. In so concluding, the ALJ relied primarily on Faith's responses or lack thereof to 19 separate interrogatories (Pet. App. 41, 49-51; see C.A. App. 893-896).[12]

The Commission affirmed the ALJ's order dismissing Faith's renewal application (Pet. App. 5-68).[13] In the Commission's view, "Faith's unresponsiveness has seriously

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[12]One of these interrogatories could be construed to have asked for the names of donors.

[13]The Commission also denied Faith's distress sale petition to sell KHOF-TV and two other stations licensed to Faith for $15 million (C.A. App. 796). With respect to KHOF-TV, the Commission did not want to insulate Faith from the consequences of its failure to obey valid discovery orders. The proposed sales of the other two stations were denied because neither station had been designated for hearing and the FCC's distress sale policy by its terms does not apply to stations that have not been designated for hearing (Pet. App. 55-62, 79-85). The Commission subsequently designated the renewal application of one of these stations for hearing together with three competing applications. *Faith Center, Inc.*, 90 F.C.C. 2d 519 (1982). The other station involved subsequently was the subject of a proposed distress sale for $4 million, as authorized by the Commission. *Faith Center, Inc.*, 88 F.C.C. 2d 788 (1981). That sale fell through, however, and Faith again is seeking distress sale relief for this station.

compromised the public's right to know whether a television * * * station is being operated in the public interest" (*id.* at 52). The Commission concluded (*ibid.*) that "Faith's pattern of behavior in these proceedings constitutes a grave abuse of the Commission's processes," and it accordingly exercised its inherent power to protect the integrity of its processes by dismissing the renewal application with prejudice (*id.* at 52-53).

The court of appeals affirmed (Pet. App. 1-2). The court expressed its "agreement with the result reached by the Commission, generally for the reasons given by it" (*id.* at 1). The court found "no abuse of discretion or procedural default" by the Commission (*ibid.*).

ARGUMENT

The decision of the court of appeals is correct, does not conflict with the decisions of this Court or any other court, and does not warrant further review.

Petitioner contends that the Commission's order dismissing Faith's license renewal application is invalid because it purportedly is predicated on Faith's refusal, on First Amendment grounds, to disclose donor names and because the dismissal order was entered before Faith could obtain judicial review of its First Amendment claim. In fact Faith's refusal to reveal the names of donors was only a minor and insignificant part of the conduct constituting "a grave abuse of the Commission's processes" (Pet. App. 52) on which the Commission relied in dismissing Faith's renewal application. Thus, notwithstanding petitioner's effort to characterize this case as presenting significant issues concerning FCC regulation of broadcast licensees that are also religious organizations, this case simply involves the application of established general principles relating to the responsibilities of all broadcast licensees under the regulatory scheme established in the Communications Act.

Under this scheme, all licensees, including religious organizations, are public trustees subject to the Commission's broad mandate to assure that they operate their stations in the public interest. 47 U.S.C. 307(d) and 309(a). See *Office of Communication of the United Church of Christ* v. *FCC*, 359 F.2d 994, 1003 (D.C. Cir. 1966). See also *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 137-138 (1940); *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 216-219 (1943). Operation in the public interest does not include the use of a broadcast station for the purpose of obtaining money by means of false "pretenses, representations or promises" broadcast over-the-air in violation of 18 U.S.C. 1343. Indeed, the Commission has specific statutory authority to deny a license or to issue a cease and desist order when the provisions of the wire fraud statute are violated. 47 U.S.C. 312(a)(6) and (b)(2).

Petitioner's religious affiliation gives it no exemption from this or any other requirement in the Communications Act. "A religious group, like any other, may buy and operate a licensed radio or television station. * * * But, like any other group, a religious sect takes its franchise 'burdened by enforceable public obligations.' " *King's Garden, Inc.* v. *FCC*, 498 F.2d 51, 60 (D.C. Cir.), cert. denied, 419 U.S. 996 (1974), quoting from *Office of Communication of the United Church of Christ* v. *FCC*, *supra*, 359 F.2d at 1003. See also *United States* v. *Lee*, 455 U.S. 252, 261 (1982) ("When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity.").

A broadcaster seeking renewal of its license is accountable before the Commission for the operation of its station and must cooperate when the Commission inquires into relevant aspects of a station's operations. The Commission

inquired into KHOF-TV's over-the-air solicitations of funds after the Commission received complaints that solicited funds were not used for the purposes for which they had been solicited. The record amply supports the conclusions of both the Commission and the ALJ that petitioner refused to comply with numerous valid discovery orders that required petitioner to provide relevant information concerning its alleged violations of 18 U.S.C. 1343.

Petitioner would have it appear as though this case involved the loss of a broadcast license solely because of the licensee's unwillingness, on religious grounds, to divulge the names of donors. In the context of an FCC investigation to determine whether an applicant for the privilege of using "a limited and valuable part of the public domain" (*Office of Communications of the United Church of Christ* v. *FCC*, *supra*, 359 F.2d at 1003) has abused its license by fraudulently soliciting funds, it is doubtful that a religious organization has any right to be treated differently from other licensees when it comes to the FCC's authority to obtain relevant information. And the names of persons who have responded to a public solicitation broadcast over the airwaves by sending funds certainly are relevant to an inquiry into the circumstances surrounding their contributions.[14]

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[14]Petitioner's status as a voluntary applicant for the "free and exclusive use of a limited and valuable part of the public domain" (*Office of Communication of the United Church of Christ* v. *FCC*, *supra*, 359 F.2d at 1003), and the government's legitimate concern with ensuring that this public domain is not used for the purpose of obtaining money by means of false pretenses readily distinguish this case from *NAACP* v. *Alabama*, 357 U.S. 449 (1958), on which petitioner relies (Pet. 22-23). In contrast to this case, where the names of those who responded to broadcast appeals for funds clearly are related to the purpose of the FCC's inquiry, this Court in *NAACP* v. *Alabama* was "unable to perceive" how the names of the NAACP's rank-and-file members had "a substantial bearing" on the issues there involved. 357 U.S. at

But even assuming arguendo that the Commission might not have the same right to donors' names when the licensee is a religious organization as it would in the case of other licensees, petitioner nevertheless would not be entitled to relief here, because virtually all of the relevant discovery requests did not concern the names of donors. Specifically, Faith repeatedly refused to make available the videotapes of Dr. Scott's "Festival of Faith" programs on which fund solicitations were made, and also repeatedly failed to provide requested information about the existence and location of these videotapes. Dismissal of Faith's renewal application also was predicated on its conduct in response to other discovery requests, which concerned such matters as: (1) projects for which funds were solicited; (2) how Wescott expended money it received from Faith; (3) the identity of officers and directors of Wescott and their responsibilities relating to the operation of KHOF-TV and to the funds solicited; (4) KHOF-TV's financial records in Wescott's possession; (5) the segregation from other funds of monies received from broadcast solicitations; and (6) the identity of KHOF-TV's programs during which fund solicitations were made (Pet. App. 41, 49-51). Of the 19 interrogatories which Faith was faulted for not answering properly (Pet. App. 41), only one (interrogatory number 3) could reasonably be interpreted as asking for the names of donors.

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464. Moreover, unlike Faith, the NAACP willingly furnished a substantial amount of seemingly relevant information, apart from its membership lists (*id.* at 465), and "made an uncontroverted showing" that previous disclosure of members' names had exposed the members to "economic reprisal, loss of employment, threat of physical coercion and other manifestations of public hostility." *Id.* at 462.

Thus this is not a case in which a broadcaster otherwise cooperated with the Commission and invoked the First Amendment solely for the limited purpose of withholding donor records from the agency.[15] Instead, this licensee "was playing the dodger to serious charges." *RKO General, Inc.* v. *FCC*, 670 F.2d 215, 238 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 (1982).

This Court has recognized that dismissal is a proper sanction when a party to a proceeding has refused to comply with valid discovery orders. See, *e.g.*, *National Hockey League* v. *Metropolitan Hockey Club*, 427 U.S. 639 (1976); *Link* v. *Wabash R.R.*, 370 U.S. 626 (1962). Here, the Commission reasonably exercised its broad discretion with respect to sanctions (*FCC* v. *WOKO, Inc.*, 329 U.S. 223, 228-229 (1946)) when it concluded that dismissal of Faith's renewal application was appropriate in light of Faith's inadequate responses to the Commission's attempt to determine whether the public interest would be served by renewing Faith's license.

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[15]Faith never volunteered to provide relevant information or documents with the names of donors deleted, nor did it ever seek a protective order permitting it to delete the names of donors from relevant materials (*e.g.*, pledge cards mailed to Faith after an over-the-air fund raising broadcast) in its possession or otherwise available to it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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